

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

HAMILTON INSURANCE DAC, :
 :
 Petitioner/Counter Defendant, :
 :
 vs. :
 :
 PFEIFER SUTTER FAMILY LLC, :
 :
 Respondent/Counter Plaintiff/ : Civil Action No. 22-0282-KD-MU
 Third Party Plaintiff, :
 :
 vs. :
 :
 JOHNS EASTER COMPANY, INC., :
 et al., :
 :
 Third Party Defendants.

ORDER

After due and proper consideration of the issues raised, and there having been no objections filed, the recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1) and dated September 30, 2022, is **ADOPTED, in part**, as the opinion of this Court. Accordingly,

- 1) Petitioner/Counter Defendant Hamilton Insurance DAC's motion to dismiss the fraud claim (doc. 18) is **GRANTED**, and Pfeifer Sutter Family LLC's (Pfeifer's) fraud claim is **dismissed without prejudice** for failure to plead with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure.
- 2) The Third-Party Defendants' - Johns Eastern Co Inc., John Stelter, J.S. Held LLC, and Rimkus Consulting Group Inc. (doc. 20) and James Crowell (doc. 30) - motions to dismiss are **GRANTED**, and Pfeifer's bad faith claim asserted against these third parties

is **dismissed with prejudice** and its fraud claim asserted against these third parties is **dismissed without prejudice** for failure to plead with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure.

The Clerk is directed to terminate the third-party defendants as defendants in this action.

3) The Court declines to adopt the recommendation that Pfeifer be given a date certain to seek leave to amend its counterclaim/third party complaint (See doc. 35, n. 5). The Rule 16(b) Scheduling Order sets October 31, 2022, as the deadline to move for leave to amend pleadings or to join other parties.

DONE this 19th day of October 2022.

s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE